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In the Supreme Court of the United States

CHARLES ELMORE DROPLEY  
CLERK

OCTOBER TERM, 1938.

No. 27.

THE TENNESSEE ELECTRIC POWER COMPANY,  
FRANKLIN POWER & LIGHT COMPANY,  
MEMPHIS POWER & LIGHT COMPANY,  
SOUTHERN TENNESSEE POWER COMPANY,  
BIRMINGHAM ELECTRIC COMPANY,  
MISSISSIPPI POWER COMPANY,  
APPALACHIAN ELECTRIC POWER COMPANY,  
CAROLINA POWER & LIGHT COMPANY,  
ALABAMA POWER COMPANY,  
KENTUCKY & WEST VIRGINIA POWER COMPANY, INC.,  
KINGSPORT UTILITIES, INCORPORATED,  
KENTUCKY-TENNESSEE LIGHT & POWER CO.,  
WEST TENNESSEE POWER & LIGHT COMPANY,  
MISSISSIPPI POWER & LIGHT COMPANY,  
EAST TENNESSEE LIGHT & POWER COMPANY,  
TENNESSEE EASTERN ELECTRIC COMPANY,

*Plaintiffs-Appellants,*

vs.

TENNESSEE VALLEY AUTHORITY, and  
ARTHUR E. MORGAN, HARCOURT A. MORGAN and  
DAVID E. LILIENTHAL, each individually and as an Executive  
Officer and Director of Tennessee Valley Authority,

*Defendants-Appellees.*

ON DIRECT APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE.

APPENDIX TO BRIEF FOR APPELLANTS.

JOHN C. WEADOCK,  
CHARLES C. TRABUE,  
CHARLES M. SEYMOUR,  
RAYMOND T. JACKSON,

*Counsel for Appellants.*



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## **APPENDIX A.**

**TENNESSEE VALLEY AUTHORITY ACT OF MAY 13, 1933  
(48 STAT. 58) AS AMENDED BY ACT OF AUGUST 31,  
1935 (49 STAT. 1075). AMENDMENTS ARE INSERTED  
FOLLOWING THE SECTIONS OF THE ORIGINAL  
ACT.**

### **AN ACT**

To improve the navigability and to provide for the flood control of the Tennessee River; to provide for reforestation and the proper use of marginal lands in the Tennessee Valley; to provide for the agricultural and industrial development of said valley; to provide for the national defense by the creation of a corporation for the operation of Government properties at and near Muscle Shoals in the State of Alabama, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of maintaining and operating the properties now owned by the United States in the vicinity of Muscle Shoals, Alabama, in the interest of the national defense and for agricultural and industrial development, and to improve navigation in the Tennessee River and to control the destructive flood waters in the Tennessee River and Mississippi River Basins, there is hereby created a body corporate by the name of the "Tennessee Valley Authority" (hereinafter referred to as the "Corporation"). The board of directors first appointed shall be deemed the incorporators, and the incorporation shall be held to have been effected from the date of the first meeting of the board. This Act may be cited as the "Tennessee Valley Authority Act of 1933." (16 U. S. C. §831.)

Sec. 2. (a) The board of directors of the Corporation (hereinafter referred to as the "board") shall be composed of three members, to be appointed by the President, by and with the advice and consent of the Senate. In appointing the members of the board, the President shall

designate the chairman. All other officials, agents, and employees shall be designated and selected by the board.

(b) The terms of office of the members first taking office after the approval of this Act shall expire as designated by the President at the time of nomination, one at the end of the third year, one at the end of the sixth year, and one at the end of the ninth year, after the date of approval of this Act. A successor to a member of the board shall be appointed in the same manner as the original members and shall have a term of office expiring nine years from the date of the expiration of the term for which his predecessor was appointed.

(c) Any member appointed to fill a vacancy in the board occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(d) Vacancies in the board so long as there shall be two members in office shall not impair the powers of the board to execute the functions of the Corporation, and two of the members in office shall constitute a quorum for the transaction of the business of the board.

(e) Each of the members of the board shall be a citizen of the United States, and shall receive a salary at the rate of \$10,000 a year, to be paid by the Corporation as current expenses. Each member of the board, in addition to his salary, shall be permitted to occupy as his residence one of the dwelling houses owned by the Government in the vicinity of Muscle Shoals, Alabama, the same to be designated by the President of the United States. Members of the board shall be reimbursed by the Corporation for actual expenses (including traveling and subsistence expenses) incurred by them in the performance of the duties vested in the board by this Act. No member of said board shall, during his continuance in office, be engaged in any other business, but each member shall devote himself to the work of the Corporation.

(f) No director shall have financial interest in any public-utility corporation engaged in the business of distributing and selling power to the public nor in any corporation engaged in the manufacture, selling, or distribution

of fixed nitrogen or fertilizer, or any ingredients thereof, nor shall any member have any interest in any business that may be adversely affected by the success of the Corporation as a producer of concentrated fertilizers or as a producer of electric power.

(g) The board shall direct the exercise of all the powers of the Corporation.

(h) All members of the board shall be persons who profess a belief in the feasibility and wisdom of this Act. (16 U. S. C. §831a.)

Sec. 3. The board shall without regard to the provisions of Civil Service laws applicable to officers and employees of the United States, appoint such managers, assistant managers, officers, employees, attorneys, and agents, as are necessary for the transaction of its business, fix their compensation, define their duties, require bonds of such of them as the board may designate, and provide a system of organization to fix responsibility and promote efficiency. Any appointee of the board may be removed in the discretion of the board. No regular officer or employee of the Corporation shall receive a salary in excess of that received by the members of the board.

All contracts to which the Corporation is a party and which require the employment of laborers and mechanics in the construction, alteration, maintenance, or repair of buildings, dams, locks, or other projects shall contain a provision that not less than the prevailing rate of wages for work of a similar nature prevailing in the vicinity shall be paid to such laborers or mechanics.

In the event any dispute arises as to what are the prevailing rates of wages, the question shall be referred to the Secretary of Labor for determination, and his decision shall be final. In the determination of such prevailing rate or rates, due regard shall be given to those rates which have been secured through collective agreement by representatives of employers and employees.

Where such work as is described in the two preceding paragraphs is done directly by the Corporation the prevailing rate of wages shall be paid in the same manner as though such work had been let by contract.

Insofar as applicable, the benefits of the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," approved September 7, 1916, as amended, shall extend to persons given employment under the provisions of this Act. (16 U. S. C. §831b.)

Sec. 4. Except as otherwise specifically provided in this Act, the Corporation—

- (a) Shall have succession in its corporate name.
- (b) May sue and be sued in its corporate name.
- (c) May adopt and use a corporate seal, which shall be judicially noticed.
- (d) May make contracts, as herein authorized.
- (e) May adopt, amend, and repeal bylaws.
- (f) May purchase or lease and hold such real and personal property as it deems necessary or convenient in the transaction of its business, and may dispose of any such personal property held by it.

The board shall select a treasurer and as many assistant treasurers as it deems proper, which treasurer and assistant treasurers shall give such bonds for the safe-keeping of the securities and moneys of the said Corporation as the board may require: *Provided*, That any member of said board may be removed from office at any time by a concurrent resolution of the Senate and the House of Representatives.

(g) Shall have such powers as may be necessary or appropriate for the exercise of the powers herein specifically conferred upon the Corporation.

(h) Shall have power in the name of the United States of America to exercise the right of eminent domain, and in the purchase of any real estate or the acquisition of real estate by condemnation proceedings, the title to such real estate shall be taken in the name of the United States of America, and thereupon all such real estate shall be entrusted to the Corporation as the agent of the United States to accomplish the purposes of this Act.

(i) Shall have power to acquire real estate for the construction of dams, reservoirs, transmission lines, power houses, and other structures, and navigation projects at any point along the Tennessee River, or any of its tributaries, and in the event that the owner or owners of such property shall fail and refuse to sell to the Corporation at a price deemed fair and reasonable by the board, then the Corporation may proceed to exercise the right of eminent domain, and to condemn all property that it deems necessary for carrying out the purposes of this Act, and all such condemnation proceedings shall be had pursuant to the provisions and requirements hereinafter specified, with reference to any and all condemnation proceedings.

**Amended by adding thereto:** "*Provided, That nothing contained herein or elsewhere in this Act shall be construed to deprive the Corporation of the rights conferred by the Act of February 26, 1931 (46 Stat. 1422, ch. 307, secs. 1 to 5, inclusive), as now compiled in section 258a to 258e, inclusive, of Title 40 of the United States Code.*" [From Sec. 1 of Amendment.]

(j) Shall have power to construct dams, reservoirs, power houses, power structures, transmission lines, navigation projects, and incidental works in the Tennessee River and its tributaries, and to unite the various power installations into one or more systems by transmission lines.

**Amended:** "(j) Shall have power to construct such dams, and reservoirs, in the Tennessee River and its tributaries, as in conjunction with Wilson Dam, and Norris, Wheeler, and Pickwick Landing Dams, now under construction, will provide a nine-foot channel in the said river and maintain a water supply for the same, from Knoxville to its mouth, and will best serve to promote navigation on the Tennessee River and its tributaries and control destructive flood waters in the Tennessee and Mississippi River drainage basins; and shall have power to acquire or construct power houses, power structures, transmission lines, navigation projects, and incidental works in the Tennessee River and its tributaries, and to unite the various power installations into one or more systems by transmission lines.

The directors of the Authority are hereby directed to report to Congress their recommendations not later than April 1, 1936, for the unified development of the Tennessee River system." [Sec. 2 of Amendment.]

**Amended by adding new section:** "(k) At any time before the expiration of five years from the date when this section, as amended, becomes law may in the name of and as agent for the United States and subject to approval of the President, dispose of any of such real property as in the judgment of the Board may be no longer necessary in carrying out the purposes of this Act, but no land shall be conveyed on which there is a permanent dam, hydraulic power plant, fertilizer plant or munitions plant, heretofore or hereafter built by or for the United States or for the Authority." [Sec. 3 of Amendment.]

**Amended by adding new section:** "(l) Shall have power to advise and cooperate in the readjustment of the population displaced by the construction of dams, the acquisition of reservoir areas, the protection of watersheds, the acquisition of rights-of-way, and other necessary acquisitions of land, in order to effectuate the purposes of the Act; and may cooperate with Federal, State, and local agencies to that end." [Sec. 13 of Amendment.] (16 U. S. C. §831c.)

Sec. 5. The board is hereby authorized—

(a) To contract with commercial producers for the production of such fertilizers or fertilizer materials as may be needed in the Government's program of development and introduction in excess of that produced by Government plants. Such contracts may provide either for outright purchase of materials by the board or only for the payment of carrying charges on special materials manufactured at the board's request for its program.

(b) To arrange with farmers and farm organizations for large-scale practical use of the new forms of fertilizers under conditions permitting an accurate measure of the economic return they produce.

(c) To cooperate with National, State, district, or county experimental stations or demonstration farms, for



the use of new forms of fertilizer or fertilizer practices during the initial or experimental period of their introduction.

**Amended:** "(c) To cooperate with National, State, district, or county experimental stations or demonstration farms, with farmers, landowners, and associations of farmers or landowners, for the use of new forms of fertilizer or fertilizer practices during the initial or experimental period of their introduction, and for promoting the prevention of soil erosion by the use of fertilizers and otherwise." [Sec. 4 of Amendment.]

(d) The board in order to improve and cheapen the production of fertilizer is authorized to manufacture and sell fixed nitrogen, fertilizer, and fertilizer ingredients at Muscle Shoals by the employment of existing facilities, by modernizing existing plants, or by any other process or processes that in its judgment shall appear wise and profitable for the fixation of atmospheric nitrogen or the cheapening of the production of fertilizer.

(e) Under the authority of this Act the board may make donations or sales of the product of the plant or plants operated by it to be fairly and equitably distributed through the agency of county demonstration agents, agricultural colleges, or otherwise as the board may direct, for experimentation, education, and introduction of the use of such products in cooperation with practical farmers so as to obtain information as to the value, effect, and best methods of their use.

(f) The board is authorized to make alterations, modifications, or improvements in existing plants and facilities, and to construct new plants.

(g) In the event it is not used for the fixation of nitrogen for agricultural purposes or leased, then the board shall maintain in stand-by condition nitrate plant numbered 2, or its equivalent, for the fixation of atmospheric nitrogen, for the production of explosives in the event of war or a national emergency, until the Congress shall by joint resolution release the board from this obligation, and if any part thereof be used by the board for the manufac-



ture of phosphoric acid or potash, the balance of nitrate plant numbered 2 shall be kept in stand-by condition.

(h) To establish, maintain, and operate laboratories and experimental plants, and to undertake experiments for the purpose of enabling the Corporation to furnish nitrogen products for military purposes, and nitrogen and other fertilizer products for agricultural purposes in the most economical manner and at the highest standard of efficiency.

(i) To request the assistance and advice of any officer, agent, or employee of any executive department or of any independent office of the United States, to enable the Corporation the better to carry out its powers successfully, and as far as practicable shall utilize the services of such officers, agents, and employees, and the President shall, if in his opinion, the public interest, service, or economy so require, direct that such assistance, advice, and service be rendered to the Corporation, and any individual that may be by the President directed to render such assistance, advice, and service shall be thereafter subject to the orders, rules, and regulations of the board: *Provided*, That any invention or discovery made by virtue of and incidental to such service by an employee of the Government of the United States serving under this section, or by any employee of the Corporation, together with any patents which may be granted thereon, shall be the sole and exclusive property of the Corporation, which is hereby authorized to grant such licenses thereunder as shall be authorized by the board: *Provided further*, That the board may pay to such inventor such sum from the income from sale of licenses as it may deem proper.

(j) Upon the requisition of the Secretary of War or the Secretary of the Navy to manufacture for and sell at cost to the United States explosives or their nitrogenous content.

(k) Upon the requisition of the Secretary of War the Corporation shall allot and deliver without charge to the War Department so much power as shall be necessary in the judgment of said Department for use in operation of all locks, lifts, or other facilities in aid of navigation.

(l) To produce, distribute, and sell electric power, as herein particularly specified.

(m) No products of the Corporation shall be sold for use outside of the United States, its Territories and possessions, except to the United States Government for the use of its Army and Navy, or to its allies in case of war.

(n) The President is authorized, within twelve months after the passage of this Act, to lease to any responsible farm organization or to any corporation organized by it nitrate plant numbered 2 and Waco Quarry, together with the railroad connecting said quarry with nitrate plant numbered 2, for a term not exceeding fifty years at a rental of not less than \$1 per year, but such authority shall be subject to the express condition that the lessee shall use said property during the term of said lease exclusively for the manufacture of fertilizer and fertilizer ingredients to be used only in the manufacture of fertilizer by said lessee and sold for use as fertilizer. The said lessee shall covenant to keep said property in first-class condition, but the lessee shall be authorized to modernize said plant numbered 2 by the installation of such machinery as may be necessary, and is authorized to amortize the cost of said machinery and improvements over the term of said lease or any part thereof. Said lease shall also provide that the board shall sell to the lessee power for the operation of said plant at the same schedule of prices that it charges all other customers for power of the same class and quantity. Said lease shall also provide that, if the said lessee does not desire to buy power of the publicly owned plant, it shall have the right to purchase its power for the operation of said plant of the Alabama Power Company or any other publicly or privately owned corporation engaged in the generation and sale of electric power, and in such case the lease shall provide further that the said lessee shall have a free right of way to build a transmission line over Government property to said plant paying the actual expenses and damages, if any, incurred by the Corporation on account of such line. Said lease shall also provide that the said lessee shall covenant that during the term of said lease the said lessee shall not enter into any illegal monopoly, com-

bination, or trust with any privately owned corporation engaged in the manufacture, production, and sale of fertilizer with the object or effect of increasing the price of fertilizer to the farmer. (16 U. S. C. §831d.)

Sec. 6. In the appointment of officials and the selection of employees for said Corporation, and in the promotion of any such employees or officials, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency. Any member of said board who is found by the President of the United States to be guilty of a violation of this section shall be removed from office by the President of the United States, and any appointee of said board who is found by the board to be guilty of a violation of this section shall be removed from office by said board. (16 U. S. C. §831e.)

Sec. 7. In order to enable the Corporation to exercise the powers and duties vested in it by this Act—

(a) The exclusive use, possession, and control of the United States nitrate plants numbered 1 and 2, including steam plants, located, respectively, at Sheffield, Alabama, and Muscle Shoals, Alabama, together with all real estate and buildings connected therewith, all tools and machinery, equipment, accessories, and materials belonging thereto, and all laboratories and plants used as auxiliaries thereto; the fixed-nitrogen research laboratory, the Waco limestone quarry, in Alabama, and Dam Numbered 2, located at Muscle Shoals, its power house, and all hydroelectric and operating appurtenances (except the locks), and all machinery, lands, and buildings in connection therewith, and all appurtenances thereof, and all other property to be acquired by the Corporation in its own name or in the name of the United States of America, are hereby intrusted to the Corporation for the purposes of this Act.

(b) The President of the United States is authorized to provide for the transfer to the Corporation of the use, possession, and control of such other real or personal property of the United States as he may from time to time deem necessary and proper for the purposes of the Corporation as herein stated. (16 U. S. C. §831f.)

Sec. 8. (a) The Corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The Corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to the venue of civil suits.

(b) The Corporation shall at all times maintain complete and accurate books of accounts.

(c) Each member of the board, before entering upon the duties of his office, shall subscribe to an oath (or affirmation) to support the Constitution of the United States and to faithfully and impartially perform the duties imposed upon him by this Act. (16 U. S. C. §831g.)

Sec. 9. (a) The board shall file with the President and with the Congress, in December of each year, a financial statement and a complete report as to the business of the Corporation covering the preceding governmental fiscal year. This report shall include an itemized statement of the cost of power at each power station, the total number of employees and the names, salaries, and duties of those receiving compensation at the rate of more than \$1,500 a year.

(b) The Comptroller General of the United States shall audit the transactions of the Corporation at such times as he shall determine, but not less frequently than once each governmental fiscal year, with personnel of his selection. In such connection he and his representatives shall have free and open access to all papers, books, records, files, accounts, plants, warehouses, offices, and all other things, property and places belonging to or under the control of or used or employed by the Corporation, and shall be afforded full facilities for counting all cash and verifying transactions with and balances in depositaries. He shall make report of each such audit in quadruplicate, one copy for the President of the United States, one for the chairman of the board, one for public inspection at the principal office of the corporation, and the other to be retained by him for the uses of the Congress. The expenses for each such audit may be paid from moneys advanced therefor by the Corporation, or from any appropriation or ap-

appropriations for the General Accounting Office, and appropriations so used shall be reimbursed promptly by the Corporation as billed by the Comptroller General. All such audit expenses shall be charged to operating expenses of the Corporation. The Comptroller General shall make special report to the President of the United States and to the Congress of any transaction or condition found by him to be in conflict with the powers or duties intrusted to the Corporation by law.

**Amended:** "(b) All purchases and contracts for supplies or services, except for personal services, made by the Corporation, shall be made after advertising, in such manner and at such times sufficiently in advance of opening bids, as the Board shall determine to be adequate to insure notice and opportunity for competition: *Provided*, That advertisement shall not be required when, (1) an emergency requires immediate delivery of the supplies or performance of the services; or (2) repair parts, accessories, supplemental equipment, or services are required for supplies or services previously furnished or contracted for; or (3) the aggregate amount involved in any purchase of supplies or procurement of services does not exceed \$500; in which cases such purchases of supplies or procurement of services may be made in the open market in the manner common among businessmen: *Provided further*, That in comparing bids and in making awards the Board may consider such factors as relative quality and adaptability of supplies or services, the bidder's financial responsibility, skill, experience, record of integrity in dealing, ability to furnish repairs and maintenance services, the time of delivery or performance offered, and whether the bidder has complied with the specifications.

"The Comptroller General of the United States shall audit the transactions of the Corporation at such times as he shall determine, but not less frequently than once each governmental fiscal year, with personnel of his selection. In such connection he and his representatives shall have free and open access to all pa-



pers, books, records, files, accounts, plants, warehouses, offices, and all other things, property, and places belonging to or under the control of or used or employed by the Corporation, and shall be afforded full facilities for counting all cash and verifying transactions with and balances in depositaries. He shall make report of each such audit in quadruplicate, one copy for the President of the United States, one for the chairman of the Board, one for public inspection at the principal office of the Corporation, and the other to be retained by him for the uses of the Congress: *Provided*, That such report shall not be made until the Corporation shall have had reasonable opportunity to examine the exceptions and criticisms of the Comptroller General or the General Accounting Office, to point out errors therein, explain or answer the same, and to file a statement which shall be submitted by the Comptroller General with his report. The expenses for each such audit shall be paid from any appropriation or appropriations for the General Accounting Office, and such part of such expenses as may be allocated to the cost of generating, transmitting, and distributing electric energy shall be reimbursed promptly by the Corporation as billed by the Comptroller General. The Comptroller General shall make special report to the President of the United States and to the Congress of any transaction or condition found by him to be in conflict with the powers or duties entrusted to the Corporation by law." [Sec. 14 of Amendment.] (16 U. S. C. §831h.)

**Amended by adding new section:** "Sec. 9a. The Board is hereby directed in the operation of any dam or reservoir in its possession and control to regulate the stream flow primarily for the purposes of promoting navigation and controlling floods. So far as may be consistent with such purposes, the Board is authorized to provide and operate facilities for the generation of electric energy at any such dam for the use of the Corporation and for the use of the United States or any agency thereof, and the Board is further authorized, whenever an opportunity is afforded, to provide and operate facilities for the generation of electric

energy in order to avoid the waste of water power, to transmit and market such power as in this act provided, and thereby, so far as may be practicable, to assist in liquidating the cost or aid in the maintenance of the projects of the Authority." [Sec. 5 of Amendment.] (16 U. S. C. §831h-1.)

Sec. 10. The board is hereby empowered and authorized to sell the surplus power not used in its operations, and for operation of locks and other works generated by it, to States, counties, municipalities, corporations, partnerships, or individuals, according to the policies hereinafter set forth; and to carry out said authority, the board is authorized to enter into contracts for such sale for a term not exceeding twenty years, and in the sale of such current by the board it shall give preference to States, counties, municipalities, and cooperative organizations of citizens or farmers, not organized or doing business for profit, but primarily for the purpose of supplying electricity to its own citizens or members: *Provided*, That all contracts made with private companies or individuals for the sale of power, which power is to be resold for a profit, shall contain a provision authorizing the board to cancel said contract upon five years' notice in writing, if the board needs said power to supply the demands of States, counties, or municipalities. In order to promote and encourage the fullest possible use of electric light and power on farms within reasonable distance of any of its transmission lines the board in its discretion shall have power to construct transmission lines to farms and small villages that are not otherwise supplied with electricity at reasonable rates, and to make such rules and regulations governing such sale and distribution of such electric power as in its judgment may be just and equitable: *Provided further*, That the board is hereby authorized and directed to make studies, experiments, and determinations to promote the wider and better use of electric power for agricultural and domestic use, or for small or local industries, and it may cooperate with State governments, or their subdivisions or agencies, with educational or research institutions, and with cooperatives or other organizations, in the applica-

tion of electric power to the fuller and better balanced development of the resources of the region.

**Amended by adding thereto:** "Provided further

That the Board is authorized to include in any contract for the sale of power such terms and conditions, including resale rate schedules, and to provide for such rules and regulations as in its judgment may be necessary or desirable for carrying out the purposes of this Act, and in case the purchaser shall fail to comply with any such terms and conditions, or violate any such rules and regulations, said contract may provide that it shall be voidable at the election of the Board: *Provided further*, That in order to supply farms and small villages with electric power, directly as contemplated by this section, the Board in its discretion shall have power to acquire existing electric facilities used in serving such farms and small villages: And *provided further*, That the terms 'States,' 'counties,' and 'municipalities' as used in this Act shall be construed to include the public agencies of any of them unless the context requires a different construction." [Sec. 6 of Amendment.] (16 U. S. C. §831i.)

Sec. 11. It is hereby declared to be the policy of the Government so far as practical to distribute and sell the surplus power generated at Muscle Shoals equitably among the States, counties, and municipalities within transmission distance. This policy is further declared to be that the projects herein provided for shall be considered primarily as for the benefit of the people of the section as a whole and particularly the domestic and rural consumers to whom the power can economically be made available, and accordingly that sale to and use by industry shall be a secondary purpose, to be utilized principally to secure a sufficiently high load factor and revenue returns which will permit domestic and rural use at the lowest possible rates and in such manner as to encourage increased domestic and rural use of electricity. It is further hereby declared to be the policy of the Government to utilize the Muscle Shoals properties so far as may be necessary to im-



prove, increase, and cheapen the production of fertilizer and fertilizer ingredients by carrying out the provisions of this Act. (16 U. S. C. §831j.)

Sec. 12. In order to place the board upon a fair basis for making such contracts and for receiving bids for the sale of such power, it is hereby expressly authorized, either from appropriations made by Congress or from funds secured from the sale of such power, or from funds secured by the sale of bonds hereafter provided for, to construct, lease, purchase, or authorize the construction of transmission lines within transmission distance from the place where generated, and to interconnect with other systems. The board is also authorized to lease to any person, persons, or corporation the use of any transmission line owned by the Government and operated by the board, but no such lease shall be made that in any way interferes with the use of such transmission line by the board: *Provided*, That if any State, county, municipality, or other public or cooperative organization of citizens or farmers, not organized or doing business for profit, but primarily for the purpose of supplying electricity to its own citizens or members, or any two or more of such municipalities or organizations, shall construct or agree to construct and maintain a properly designed and built transmission line to the Government reservation upon which is located a Government generating plant, or to a main transmission line owned by the Government or leased by the board and under the control of the board, the board is hereby authorized and directed to contract with such State, county, municipality, or other organization, or two or more of them, for the sale of electricity for a term not exceeding thirty years; and in any such case the board shall give to such State, county, municipality, or other organization ample time to fully comply with any local law now in existence or hereafter enacted providing for the necessary legal authority for such State, county, municipality, or other organization to contract with the board for such power: *Provided further*, That all contracts entered into between the Corporation and any municipality or other political subdivision or cooperative organization shall provide that

the electric power shall be sold and distributed to the ultimate consumer without discrimination as between consumers of the same class, and such contract shall be voidable at the election of the board if a discriminatory rate, rebate, or other special concession is made or given to any consumer or user by the municipality or other political subdivision or cooperative organization: And *provided further*, That as to any surplus power not so sold as above provided to States, counties, municipalities, or other said organizations, before the board shall sell the same to any person or corporation engaged in the distribution and resale of electricity for profit, it shall require said person or corporation to agree that any resale of such electric power by said person or corporation shall be made to the ultimate consumer of such electric power at prices that shall not exceed a schedule fixed by the board from time to time as reasonable, just, and fair; and in case of any such sale, if an amount is charged the ultimate consumer which is in excess of the price so deemed to be just, reasonable, and fair by the board, the contract for such sale between the board and such distributor of electricity shall be voidable at the election of the board: And *provided further*, That the board is hereby authorized to enter into contracts with other power systems for the mutual exchange of unused excess power upon suitable terms, for the conservation of stored water, and as an emergency or break-down relief. (16 U. S. C. §831k.)

**Amended by adding new section:** "Sec. 12a. In order (1) to facilitate the disposition of the surplus power of the Corporation according to the policies set forth in this Act; (2) to give effect to the priority herein accorded to States, counties, municipalities, and nonprofit organizations in the purchase of such power by enabling them to acquire facilities for the distribution of such power; and (3) at the same time to preserve existing distribution facilities as going concerns and avoid duplication of such facilities, the Board is authorized to advise and cooperate with and assist, by extending credit for a period of not exceeding five years to, States, Counties, municipalities and nonprofit organizations situated within transmission distance

from any dam where such power is generated by the Corporation in acquiring, improving, and operating (a) existing distribution facilities and incidental works, including generating plants; and (b) interconnecting transmission lines; or in acquiring any interest in such facilities, incidental works, and lines." [Sec. 7 of Amendment.] (§16, U. S. C. §831k-1.)

Sec. 13. Five per centum of the gross proceeds received by the board for the sale of power generated at Dam Numbered 2, or from any other hydropower plant hereafter constructed in the State of Alabama, shall be paid to the State of Alabama; and 5 per centum of the gross proceeds from the sale of power generated at Cove Creek Dam, hereinafter provided for, or any other dam located in the State of Tennessee, shall be paid to the State of Tennessee. Upon the completion of said Cove Creek Dam the board shall ascertain how much additional power is thereby generated at Dam Numbered 2 and at any other dam hereafter constructed by the Government of the United States on the Tennessee River, in the State of Alabama, or in the State of Tennessee, and from the gross proceeds of the sale of such additional power  $2\frac{1}{2}$  per centum shall be paid to the State of Alabama and  $2\frac{1}{2}$  per centum to the State of Tennessee. These percentages shall apply to any other dam that may hereafter be constructed and controlled and operated by the board on the Tennessee River or any of its tributaries, the main purpose of which is to control flood waters and where the development of electric power is incidental to the operation of such flood-control dam. In ascertaining the gross proceeds from the sale of such power upon which a percentage is paid to the States of Alabama and Tennessee, the board shall not take into consideration the proceeds of any power sold or delivered to the Government of the United States, or any department or agency of the Government of the United States, used in the operation of any locks on the Tennessee River or for any experimental purpose, or for the manufacture of fertilizer or any of the ingredients thereof, or for any other governmental purpose: *Provided*, That the percentages to be paid to the States of Alabama and Tennessee, as provided in this section, shall be subject to revision and change by the board,

and any new percentages established by the board, when approved by the President, shall remain in effect until and unless again changed by the board with the approval of the President. No change of said percentages shall be made more often than once in five years, and no change shall be made without giving to the States of Alabama and Tennessee an opportunity to be heard. (16 U. S. C. §831l.)

Sec. 14. The board shall make a thorough investigation as to the present value of Dam Numbered 2, and the steam plants at nitrate plant numbered 1, and nitrate plant numbered 2, and as to the cost of Cove Creek Dam, for the purpose of ascertaining how much of the value or the cost of said properties shall be allocated and charged up to (1) flood control, (2) navigation, (3) fertilizer, (4) national defense, and (5) the development of power. The findings thus made by the board, when approved by the President of the United States, shall be final, and such findings shall thereafter be used in all allocation of value for the purpose of keeping the book value of said properties. In like manner, the cost and book value of any dams, steam plants, or other similar improvements hereafter constructed and turned over to said board for the purpose of control and management shall be ascertained and allocated.

**Amended by adding thereto:** "The Board shall, on or before January 1, 1937, file with Congress a statement of its allocation of the value of all such properties turned over to said Board, and which have been completed prior to the end of the preceding fiscal year, and shall thereafter in its annual report to Congress file a statement of its allocation of the value of such properties as have been completed during the preceding fiscal year.

"For the purpose of accumulating data useful to the Congress in the formulation of legislative policy in matters relating to the generation, transmission, and distribution of electric energy and the production of chemicals necessary to national defense and useful in agriculture, and to the Federal Power Commission and other Federal and State agencies, and to the public, the Board shall keep complete accounts of its costs

of generation, transmission, and distribution of electric energy and shall keep a complete account of the total cost of generating and transmission facilities constructed or otherwise acquired by the Corporation, and of producing such chemicals, and a description of the major components of such costs according to such uniform system of accounting for public utilities as the Federal Power Commission has, and if it have none, then it is hereby empowered and directed to prescribe such uniform system of accounting, together with records of such other physical data and operating statistics of the Authority as may be helpful in determining the actual cost and value of services, and the practices, methods, facilities, equipment, appliances, and standards and sizes, types, location, and geographical and economic integration of plants and systems best suited to promote the public interest, efficiency, and the wider and more economical use of electric energy. Such data shall be reported to the Congress by the Board from time to time with appropriate analyses and recommendations, and, so far as practicable, shall be made available to the Federal Power Commission and other Federal and State agencies which may be concerned with the administration of legislation relating to the generation, transmission, or distribution of electric energy and chemicals useful to agriculture. It is hereby declared to be the policy of this Act that, in order, as soon as practicable, to make the power projects self-supporting and self-liquidating, the surplus power shall be sold at rates which, in the opinion of the Board, when applied to the normal capacity of the Authority's power facilities, will produce gross revenues in excess of the cost of production of said power and in addition to the statement of the cost of power at each power station as required by section 9 (a) of the 'Tennessee Valley Act of 1933,' the Board shall file with each annual report, a statement of the total cost of all power generated by it at all power stations during each year, the average cost of such power per kilowatt hour, the rates at which sold, and to whom sold, and copies of

all contracts for the sale of power." [Sec. 8 of Amendment.] (16 U. S. C. §831m.)

Sec. 15. In the construction of any future dam, steam plant, or other facility, to be used in whole or in part for the generation or transmission of electric power the board is hereby authorized and empowered to issue on the credit of the United States and to sell serial bonds not exceeding \$50,000,000 in amount, having a maturity not more than fifty years from the date of issue thereof, and bearing interest not exceeding  $3\frac{1}{2}$  per centum per annum. Said bonds shall be issued and sold in amounts and prices approved by the Secretary of the Treasury, but all such bonds as may be so issued and sold shall have equal rank. None of said bonds shall be sold below par, and no fee, commission, or compensation whatever shall be paid to any person, firm, or corporation for handling, negotiating the sale, or selling the said bonds. All of such bonds so issued and sold shall have all the rights and privileges accorded by law to Panama Canal bonds, authorized by section 8 of the Act of June 28, 1902, chapter 1302, as amended by the Act of December 21, 1905 (ch. 3, sec. 1, 34 Stat. 5), as now compiled in section 743 of title 31 of the United States Code. All funds derived from the sale of such bonds shall be paid over to the Corporation. (16 U. S. C. §831n.)

**Amended by adding new section:** "Sec. 15a. With the approval of the Secretary of the Treasury, the Corporation is authorized to issue bonds not to exceed in the aggregate \$50,000,000 outstanding at any one time which bonds may be sold by the Corporation to obtain funds to carry out the provisions of section 7 of this amendatory Act. Such bonds shall be in such forms and denominations, shall mature within such periods not more than fifty years from the date of their issue, may be redeemable at the option of the Corporation before maturity in such manner as may be stipulated therein, shall bear such rates of interest not exceeding  $3\frac{1}{2}$  per centum per annum, shall be subject to such terms and conditions, shall be issued in such manner and amount, and sold at such prices, as



may be prescribed by the Corporation, with the approval of the Secretary of the Treasury: *Provided*, That such bonds shall not be sold at such prices or on such terms as to afford an investment yield to the holders in excess of  $3\frac{1}{2}$  per centum per annum. Such bonds shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guaranty shall be expressed on the face thereof, and such bonds shall be lawful investments, and may be accepted as security, for all fiduciary trust, and public funds, the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. In the event that the Corporation should not pay upon demand, when due, the principal of, or interest on, such bonds, the Secretary of the Treasury shall pay to the holder the amount thereof, which is hereby authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such bonds. The Secretary of the Treasury, in his discretion, is authorized to purchase any bonds issued hereunder, and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of the Corporation's bonds hereunder. The Secretary of the Treasury may, at any time, sell any of the bonds of the Corporation acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of the bonds of the Corporation shall be treated as public-debt transactions of the United States. With the approval of the Secretary of the Treasury, the Corporation shall have power to purchase such bonds in the open market at any time and at any price. No bonds shall be issued hereunder to provide funds or bonds necessary for the performance of any proposed

contract negotiated by the Corporation under the authority of section 7 of this amendatory Act until the proposed contract shall have been submitted to and approved by the Federal Power Commission. When any such proposed contract shall have been submitted to the said Commission, the matter shall be given precedence and shall be in every way expedited and the Commission's determination of the matter shall be final. The authority of the Corporation to issue bonds hereunder shall expire at the end of five years from the date when this section as amended herein becomes law, except that such bonds may be issued at any time after the expiration of said period to provide bonds or funds necessary for the performance of any contract entered into by the Corporation, prior to the expiration of said period, under the authority of section 7 of this amendatory Act." [Sec. 9 of Amendment.] (16 U. S. C. §831n-1.)

Sec. 16. The board, whenever the President deems it advisable, is hereby empowered and directed to complete Dam Numbered 2 at Muscle Shoals, Alabama, and the steam plant at nitrate plant numbered 2, in the vicinity of Muscle Shoals, by installing in Dam Numbered 2 the additional power units according to the plans and specifications of said dam, and the additional power unit in the steam plant at nitrate plant numbered 2. (16 U. S. C. §831o.)

Sec. 17. The Secretary of War, or the Secretary of the Interior, is hereby authorized to construct, either directly or by contract to the lowest responsible bidder, after due advertisement, a dam in and across Clinch River in the State of Tennessee, which has by long custom become known and designated as the Cove Creek Dam, together with a transmission line from Muscle Shoals, according to the latest and most approved designs, including power house and hydroelectric installations and equipment for the generation of power, in order that the waters of the said Clinch River may be impounded and stored above said dam for the purpose of increasing and regulating the flow of the Clinch River and the Tennessee River below, so



that the maximum amount of primary power may be developed at Dam Numbered 2 and at any and all other dams below the said Cove Creek Dam: *Provided, however*, That the President is hereby authorized by appropriate order to direct the employment by the Secretary of War, or by the Secretary of the Interior, of such engineer or engineers as he may designate, to perform such duties and obligations as he may deem proper, either in the drawing of plans and specifications for said dam, or to perform any other work in the building or construction of the same. The President may, by such order, place the control of the construction of said dam in the hands of such engineer or engineers taken from private life as he may desire: And *provided further*, That the President is hereby expressly authorized, without regard to the restriction or limitation of any other statute, to select attorneys and assistants for the purpose of making any investigation he may deem proper to ascertain whether, in the control and management of Dam Numbered 2, or any other dam or property owned by the Government in the Tennessee River Basin, or in the authorization of any improvement therein, there has been any undue or unfair advantage given to private persons, partnerships, or corporations, by any officials or employees of the Government, or whether in any such matters the Government has been injured or unjustly deprived of any of its rights. (16 U. S. C. §831p.)

Sec. 18. In order to enable and empower the Secretary of War, the Secretary of the Interior, or the board to carry out the authority hereby conferred, in the most economical and efficient manner, he or it is hereby authorized and empowered in the exercise of the powers of national defense in aid of navigation, and in the control of the flood waters of the Tennessee and Mississippi Rivers, constituting channels of interstate commerce, to exercise the right of eminent domain for all purposes of this Act, and to condemn all lands, easements, rights of way, and other area necessary in order to obtain a site for said Cove Creek Dam, and the flowage rights for the reservoir of water above said dam, and to negotiate and conclude contracts with States, counties, municipalities, and all State agencies

and with railroads, railroad corporations, common carriers, and all public utility commissions and any other person, firm, or corporation, for the relocation of railroad tracks, highways, highway bridges, mills, ferries, electric-light plants, and any and all other properties, enterprises, and projects whose removal may be necessary in order to carry out the provisions of this Act. When said Cove Creek Dam, transmission line, and power house shall have been completed, the possession, use, and control thereof shall be intrusted to the Corporation for use and operation in connection with the general Tennessee Valley project, and to promote flood control and navigation in the Tennessee River. (16 U. S. C. §831q.)

Sec. 19. The Corporation, as an instrumentality and agency of the Government of the United States for the purpose of executing its constitutional powers, shall have access to the Patent Office of the United States for the purpose of studying, ascertaining, and copying all methods, formulae, and scientific information (not including access to pending applications for patents) necessary to enable the Corporation to use and employ the most efficacious and economical process for the production of fixed nitrogen, or any essential ingredient of fertilizer, or any method of improving and cheapening the production of hydroelectric power, and any owner of a patent whose patent rights may have been thus in any way copied, used, infringed, or employed by the exercise of this authority by the Corporation shall have as the exclusive remedy a cause of action against the Corporation to be instituted and prosecuted on the equity side of the appropriate district court of the United States, for the recovery of reasonable compensation for such infringement. The Commissioner of Patents shall furnish to the Corporation, at its request and without payment of fees, copies of documents on file in his office: *Provided*, That the benefits of this section shall not apply to any art, machine, method of manufacture, or composition of matter, discovered or invented by such employee during the time of his employment or service with the Corporation or with the Government of the United States. (16 U. S. C. §831r.)

Sec. 20. The Government of the United States hereby reserves the right, in case of war or national emergency declared by Congress, to take possession of all or any part of the property described or referred to in this Act for the purpose of manufacturing explosives or for other war purposes; but, if this right is exercised by the Government, it shall pay the reasonable and fair damages that may be suffered by any party whose contract for the purchase of electric power or fixed nitrogen or fertilizer ingredients is hereby violated, after the amount of the damages has been fixed by the United States Court of Claims in proceedings instituted and conducted for that purpose under rules prescribed by the court. (16 U. S. C. §831s.)

Sec. 21. (a) All general penal statutes relating to the larceny, embezzlement, conversion, or to the improper handling, retention, use, or disposal of public moneys or property of the United States, shall apply to the moneys and property of the Corporation and to moneys and properties of the United States intrusted to the Corporation.

(b) Any person who, with intent to defraud the Corporation, or to deceive any director, officer, or employee of the Corporation or any officer or employee of the United States (1) makes any false entry in any book of the Corporation, or (2) makes any false report or statement for the Corporation, shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned not more than five years, or both.

(c) Any person who shall receive any compensation, rebate, or reward, or shall enter into any conspiracy, collusion, or agreement, express or implied, with intent to defraud the Corporation or wrongfully and unlawfully to defeat its purposes, shall, on conviction thereof, be fined not more than \$5,000 or imprisoned not more than five years, or both. (16 U. S. C. §831t.)

Sec. 22. To aid further the proper use, conservation, and development of the natural resources of the Tennessee River drainage basin and of such adjoining territory as may be related to or materially affected by the development consequent to this Act, and to provide for the gen-

eral welfare of the citizens of said areas, the President is hereby authorized, by such means or methods as he may deem proper within the limits of appropriations made therefor by Congress, to make such surveys of and general plans for said Tennessee basin and adjoining territory as may be useful to the Congress and to the several States in guiding and controlling the extent, sequence, and nature of development that may be equitably and economically advanced through the expenditure of public funds, or through the guidance or control of public authority, all for the general purpose of fostering an orderly and proper physical, economic, and social development of said areas; and the President is further authorized in making said surveys and plans to cooperate with the States affected thereby, or subdivisions or agencies of such States, or with cooperative or other organizations, and to make such studies, experiments, or demonstrations as may be necessary and suitable to that end. (16 U. S. C. §831u.)

Sec. 23. The President shall, from time to time, as the work provided for in the preceding section progresses, recommend to Congress such legislation as he deems proper to carry out the general purposes stated in said section, and for the especial purpose of bringing about in said Tennessee drainage basin and adjoining territory in conformity with said general purposes (1) the maximum amount of flood control; (2) the maximum development of said Tennessee River for navigation purposes; (3) the maximum generation of electric power consistent with flood control and navigation; (4) the proper use of marginal lands; (5) the proper method of reforestation of all lands in said drainage basin suitable or reforestation; and (6) the economic and social well-being of the people living in said river basin. (16 U. S. C. §831v.)

Sec. 24. For the purpose of securing any rights of flowage, or obtaining title to or possession of any property, real or personal, that may be necessary or may become necessary, in the carrying out of any of the provisions of this Act, the President of the United States for a period of three years from the date of the enactment of this Act, is hereby authorized to acquire title in the name of the

United States to such rights or such property, and to provide for the payment for same by directing the board to contract to deliver power generated at any of the plants now owned or hereafter owned or constructed by the Government or by said Corporation, such future delivery of power to continue for a period not exceeding thirty years. Likewise, for one year after the enactment of this Act, the President is further authorized to sell or lease any parcel or part of any vacant real estate now owned by the Government in said Tennessee River Basin, to persons, firms, or corporations who shall contract to erect thereon factories or manufacturing establishments, and who shall contract to purchase of said Corporation electric power for the operation of any such factory or manufacturing establishment. No contract shall be made by the President for the sale of any of such real estate as may be necessary for present or future use on the part of the Government for any of the purposes of this Act. Any such contract made by the President of the United States shall be carried out by the board: *Provided*, That no such contract shall be made that will in any way abridge or take away the preference right to purchase power given in this Act to States, counties, municipalities, or farm organizations: *Provided further*, That no lease shall be for a term to exceed fifty years: *Provided further*, That any sale shall be on condition that said land shall be used for industrial purposes only. (16 U. S. C. §831w.)

Sec. 25. The Corporation may cause proceedings to be instituted for the acquisition by condemnation of any lands, easements, or rights of way which, in the opinion of the Corporation, are necessary to carry out the provisions of this Act. The proceedings shall be instituted in the United States district court for the district in which the land, easement, right of way, or other interest, or any part thereof, is located, and such court shall have full jurisdiction to divest the complete title to the property sought to be acquired out of all persons or claimants and vest the same in the United States in fee simple, and to enter a decree quieting the title thereto in the United States of America.



Upon the filing of a petition for condemnation and for the purpose of ascertaining the value of the property to be acquired, and assessing the compensation to be paid, the court shall appoint three commissioners who shall be disinterested persons and who shall take and subscribe an oath that they do not own any lands, or interest or easement in any lands, which it may be desirable for the United States to acquire in the furtherance of said project, and such commissioners shall not be selected from the locality wherein the land sought to be condemned lies. Such commissioners shall receive a per diem of not to exceed \$15 for their services, together with an additional amount of \$5 per day for subsistence for time actually spent in performing their duties as commissioners.

It shall be the duty of such commissioners to examine into the value of the lands sought to be condemned, to conduct hearings and receive evidence, and generally to take such appropriate steps as may be proper for the determination of the value of the said lands sought to be condemned, and for such purpose the commissioners are authorized to administer oaths and subpoena witnesses, which said witnesses shall receive the same fees as are provided for witnesses in the Federal courts. The said commissioners shall thereupon file a report setting forth their conclusions as to the value of the said property sought to be condemned, making a separate award and valuation in the premises with respect to each separate parcel involved. Upon the filing of such award in court the clerk of said court shall give notice of the filing of such award to the parties to said proceeding, in manner and form as directed by the judge of said court.

Either or both parties may file exceptions to the award of said commissioners within twenty days from the date of the filing of said award in court. Exceptions filed to such award shall be heard before three Federal district judges unless the parties, in writing, in person, or by their attorneys, stipulate that the exceptions may be heard before a lesser number of judges. On such hearing such judges shall pass *de novo* upon the proceedings had before the commissioners, may view the property, and may take additional evidence. Upon such hearings the said judges

shall file their own award, fixing therein the value of the property sought to be condemned, regardless of the award previously made by the said commissioners.

At any time within thirty days from the filing of the decision of the district judges upon the hearing on exceptions to the award made by the commissioners, either party may appeal from such decision of the said judges to the circuit court of appeals, and the said circuit court of appeals shall upon the hearing on said appeal dispose of the same upon the record, without regard to the awards or findings theretofore made by the commissioners or the district judges, and such circuit court of appeals shall thereupon fix the value of the said property sought to be condemned.

Upon acceptance of an award by the owner of any property herein provided to be appropriated, and the payment of the money awarded or upon the failure of either party to file exceptions to the award of the commissioners within the time specified, or upon the award of the commissioners, and the payment of the money by the United States pursuant thereto, or the payment of the money awarded into the registry of the court by the Corporation, the title to said property and the right to the possession thereof shall pass to the United States, and the United States shall be entitled to a writ in the same proceeding to dispossess the former owner of said property, and all lessees, agents, and attorneys of such former owner, and to put the United States, by its corporate creature and agent, the Corporation, into possession of said property.

In the event of any property owned in whole or in part by minors, or insane persons, or incompetent persons, or estates of deceased persons, then the legal representatives of such minors, insane persons, incompetent persons, or estates shall have power, by and with the consent and approval of the trial judge in whose court said matter is for determination, to consent to or reject the awards of the commissioners herein provided for, and in the event that there be no legal representatives, or that the legal representatives for such minors, insane persons, or incompetent persons shall fail or decline to act, then such trial judge may, upon motion, appoint a guardian ad litem to act for

such minors, insane persons, or incompetent persons, and such guardian ad litem shall act to the full extent and to the same purpose and effect as his ward could act, if competent, and such guardian ad litem shall be deemed to have full power and authority to respond, to conduct, or to maintain any proceeding herein provided for affecting his said ward. (16 U. S. C. §831x.)

Sec. 26. The net proceeds derived by the board from the sale of power and any of the products manufactured by the Corporation, after deducting the cost of operation, maintenance, depreciation, amortization, and an amount deemed by the board as necessary to withhold as operating capital, or devoted by the board to new construction, shall be paid into the Treasury of the United States at the end of each calendar year.

**Amended:** "Sec. 26. Commencing July 1, 1936, the proceeds for each fiscal year derived by the Board from the sale of power or any other products manufactured by the Corporation, and from any other activities of the Corporation including the disposition of any real or personal property, shall be paid into the Treasury of the United States at the end of each calendar year, save and except such part of such proceeds as in the opinion of the Board shall be necessary for the Corporation in the operation of dams and reservoirs, in conducting its business in generating, transmitting, and distributing electric energy and in manufacturing, selling, and distributing fertilizer and fertilizer ingredients. A continuing fund of \$1,000,000 is also excepted from the requirements of this section and may be withheld by the Board to defray emergency expenses and to insure continuous operation: *Provided*, That nothing in this section shall be construed to prevent the use by the Board, after June 30, 1936, of proceeds accruing prior to July 1, 1936, for the payment of obligations lawfully incurred prior to such latter date." [Sec. 10 of Amendment.] (16 U. S. C. §831y.)



**Amended by adding new section:** "Sec. 26a. The unified development and regulation of the Tennessee River system requires that no dam, appurtenant works, or other obstruction, affecting navigation, flood control, or public lands or reservations shall be constructed, and thereafter operated or maintained across, along, or in the said river or any of its tributaries until plans for such construction, operation, and maintenance shall have been submitted to and approved by the Board; and the construction, commencement of construction, operation, or maintenance of such structures without such approval is hereby prohibited. When such plans shall have been approved, deviation therefrom either before or after completion of such structures is prohibited unless the modification of such plans has previously been submitted to and approved by the Board.

"In the event the Board shall, within sixty days after their formal submission to the Board, fail to approve any plans or modifications, as the case may be, for construction, operation, or maintenance of any such structures on the Little Tennessee River, the above requirements shall be deemed satisfied, if upon application to the Secretary of War, with due notice to the Corporation, and hearing thereon, such plans or modifications are approved by the said Secretary of War as reasonably adequate and effective for the unified development and regulation of the Tennessee River system.

"Such construction, commencement of construction, operation, or maintenance of any structures or parts thereof in violation of the provisions of this section may be prevented, and the removal or discontinuation thereof required by the injunction or order of any district court exercising jurisdiction in any district in which such structures or parts thereof may be situated, and the Corporation is hereby authorized to bring appropriate proceedings to this end.

"The requirements of this section shall not be construed to be a substitute for the requirements of any

other law of the United States or of any State, now in effect or hereafter enacted, but shall be in addition thereto, so that any approval, license, permit, or other sanction now or hereafter required by the provisions of any such law for the construction, operation, or maintenance of any structures whatever, except such as may be constructed, operated, or maintained by the Corporation, shall be required, notwithstanding the provisions of this section." [Sec. 11 of Amendment.] (16 U. S. C. §831y-1.)

Sec. 27. All appropriations necessary to carry out the provisions of this Act are hereby authorized. (16 U. S. C. §831z.)

Sec. 28. That all Acts or parts of Acts in conflict herewith are hereby repealed, so far as they affect the operations contemplated by this Act. (16 U. S. C. §831aa.)

Sec. 29. The right to alter, amend, or repeal this Act is hereby expressly declared and reserved, but no such amendment or repeal shall operate to impair the obligation of any contract made by said Corporation under any power conferred by this Act. (16 U. S. C. §831bb.)

Sec. 30. The sections of this Act are hereby declared to be separable, and in the event any one or more sections of this Act be held to be unconstitutional, the same shall not affect the validity of other sections of this Act. (16 U. S. C. §831cc.)

Approved May 18th, 1933.

**Amended by adding new section:** "Sec. 31. This Act shall be liberally construed to carry out the purposes of Congress to provide for the disposition of and make needful rules and regulations respecting Government properties entrusted to the Authority, provide for the national defense, improve navigation, control destructive floods, and promote interstate commerce and the general welfare, but no real estate shall be held except what is necessary in the opinion of the Board to carry out plans and projects actually decided upon requiring the use of such land: *Provided*,

That any land purchased by the Authority and not necessary to carry out plans and projects actually decided upon shall be sold by the Authority as agent of the United States, after due advertisement, at public auction to the highest bidder, or at private sale as provided in section 3 of this amendatory Act." [Sec. 12 of Amendment.] (16 U. S. C. §831dd.)

**Separability Provision of Amendatory Act of August 31, 1935:**

Sec. 15. That the sections of this Act are hereby declared to be separable, and in the event of any one or more sections of this Act, or parts thereof, be held to be unconstitutional, such holding shall not affect the validity of other sections or parts of this Act. (16 U. S. C. §831cc.)

Approved, August 31, 1935.

**APPENDIX B.**  
**RIVERS AND HARBORS ACTS.**

(1) **Rivers and Harbors Act of March 3, 1925, c. 467, 43 Stat. 1186 (1190).**

Sec. 3. The Secretary of War, through the Corps of Engineers of the United States Army, and the Federal Power Commission are jointly hereby authorized and directed to prepare and submit to Congress an estimate of the cost of making such examinations, surveys, or other investigations as, in their opinion, may be required of those navigable streams of the United States, and their tributaries, whereon power development appears feasible and practicable, with a view to the formulation of general plans for the most effective improvement of such streams for the purposes of navigation and the prosecution of such improvement in combination with the most efficient development of the potential water power, the control of floods, and the needs of irrigation: *Provided*, That no consideration of the Colorado River and its problems shall be included in the consideration or estimate provided herein.

(2) **Rivers and Harbors Act of January 21, 1927, c. 47, 44 Stat. 1010 (1010, 1015).**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the following works of improvement are hereby adopted and authorized, to be prosecuted under the direction of the Secretary of War and supervision of the Chief of Engineers, in accordance with the plans recommended in the reports hereinafter designated:

. . .

Surveys in accordance with House Document Numbered 308, Sixty-ninth Congress, first session, and including in the streams mentioned in said documents<sup>1</sup> the following streams:

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<sup>1</sup> The streams mentioned in H. D. 308, 69th Congress, 1st session, included the Tennessee River and its tributaries.

(3) **Rivers and Harbors Act of July 3, 1930, c. 847, 46 Stat. 918 (918, 927-8).**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the following works of improvement are hereby adopted and authorized, to be prosecuted under the direction of the Secretary of War and supervision of the Chief of Engineers, in accordance with the plans recommended in the reports hereinafter designated.

• • •

The project for the permanent improvement of the main stream of the Tennessee River for a navigable depth of nine feet in accordance with the recommendations of the Chief of Engineers in House Document Numbered 328 of the Seventy-first Congress, second session, is hereby authorized: *Provided*, That an expenditure of \$5,000,000 shall be authorized to be appropriated for the prosecution of work under this project: *Provided further*, That the Chief of Engineers is hereby directed to ascertain and report to Congress on the first day of the first regular session of the Seventy-second Congress, advising the prospective cooperation offered by responsible interests, under the Federal Water Power Act, in the program of construction recommended by the Chief of Engineers, providing for the nine-foot project by means of high dams.

**APPENDIX C.**  
**THE FEDERAL POWER ACT.**

**16 U. S. C. §791a et seq.**

§803. Conditions of license generally.—All licenses issued under this Part shall be on the following conditions:

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(c) That the licensee shall maintain the project works in a condition of repair adequate for the purposes of navigation and for the efficient operation of said works in the development and transmission of power, shall make all necessary renewals and replacements, shall establish and maintain adequate depreciation reserves for such purposes, shall so maintain and operate said works as not to impair navigation, and shall conform to such rules and regulations as the commission may from time to time prescribe for the protection of life, health, and property. Each licensee hereunder shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under the license, and in no event shall the United States be liable therefor. (Act of Congress, June 10, 1920, c. 285 §10(c), 41 Stat. 1068.)

§804. Project works affecting navigable waters; requirements insertable in license.—If the dam or other project works are to be constructed across, along, or in any of the navigable waters of the United States, the commission may, in so far as it deems the same reasonably necessary to promote the present and future needs of navigation and consistent with a reasonable investment cost to the licensee, include in the license any one or more of the following provisions or requirements:

(a) That such licensee shall, to the extent necessary to preserve and improve navigation facilities, construct, in whole or in part, without expense to the United States, in connection with such dam, a lock or locks, booms, sluices, or other structures for navigation purposes, in accordance with plans and specifications approved by the Chief of Engineers and the Secretary of War and made part of such license.



(b) That in case such structures for navigation purposes are not made a part of the original construction at the expense of the licensee, then whenever the United States shall desire to complete such navigation facilities the licensee shall convey to the United States, free of cost, such of its land and its rights of way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete such navigation facilities.

(c) That such licensee shall furnish free of cost to the United States power for the operation of such navigation facilities, whether constructed by the licensee or by the United States. (Act of Congress, June 10, 1920, c. 285, §11, 41 Stat. 1070.)

§811. Operation of navigation facilities; rules and regulations; penalties.—The Commission shall require the construction, maintenance, and operation by a licensee at its own expense of such lights and signals as may be directed by the Secretary of War, and such fishways as may be prescribed by the Secretary of Commerce. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure built under the provisions of this chapter, whether at the expense of a licensee hereunder or of the United States, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure as may be made from time to time by the Secretary of War; and for willful failure to comply with any such rule or regulation such licensee shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 825o of this chapter. (Act of Congress, June 10, 1920, c. 285, §18, 41 Stat. 1073; Act of Congress, Aug. 26, 1935, c. 687, Title II, §209, 49 Stat. 845.)

## APPENDIX D.

### STATUTES REGULATING ELECTRIC UTILITIES IN THE STATE OF TENNESSEE.<sup>1</sup>

Section 5447. The railroad and public utilities commission shall have general supervision and regulation of, jurisdiction, and control over, all public utilities, and also over their property, property rights, facilities and franchises, so far as may be necessary for the purpose of carrying out the provisions of this Statute. (1919, Ch. 49, Sec. 3.)

Section 5450. The commission shall have power:

(a) *To Investigate*, upon its own initiative or upon complaint in writing, any matter concerning any public utility as herein defined.

(b) *From Time to Time to Appraise and Value the Property of Any Public Utility* as herein defined, whenever in the judgment of said commission it shall be necessary so to do, for the purpose of carrying out any of the provisions of this law, and in making such valuation the commission may have access to and use any books, documents or records in the possession of any department or board of the state or any political subdivision thereof.

(c) *Rates, etc., Fixed*.—After hearing upon notice, by order in writing, to fix just and reasonable individual rates, joint rates, tolls, fares, charges or schedules thereof, as well as commutation, mileage, and other special rates which shall be imposed, observed, and followed thereafter by any public utility as herein defined, whenever the commission

<sup>1</sup> With the exception of Mississippi each of the States in which any of the appellants are now operating has a State regulatory commission with specified powers and duties, as provided by statute, for the control and regulation of the property, facilities and operations of electric and other utility corporations. Many variations exist in the statutory provisions which have been enacted by the various states, but the pertinent statutes of Tennessee are reproduced here as illustrating the general substance and scope of such State regulations. In Mississippi, although there is no State regulatory commission, municipalities are given regulatory powers within their territorial limits.

References herein cited are to the Tennessee Code of 1932.

shall determine any existing individual rate, joint rate, toll, fare, charge, or schedule thereof or commutation, mileage, or other special rates to be unjust, unreasonable, excessive, insufficient, or unjustly discriminatory or preferential, howsoever the same may have heretofore been fixed or established.

(d) *Schedules of Classifications and Rates.*—To require every such public utility to file with it complete schedules of every classification employed and of every individual or joint rate, toll, fare, or charge made or exacted by it for any product supplied or service rendered within this state as specified in such requirement.

(e) *Standards, Classifications, etc.*—After hearing, by order in writing, to fix just and reasonable standards, classifications, regulations, practices or services to be furnished, imposed, observed and followed thereafter by any public utility.

(f) *Standards for Measurements, etc.*—After hearing, by order in writing, to ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, voltage, or other condition, pertaining to the supply of the product or service rendered by any public utility. And to prescribe reasonable regulations for examination and test of such product or service and for the measurement thereof.

(g) *Accuracy of Meters, etc.*—After hearing, by order in writing, to establish reasonable rules and regulations, specifications and standards, to secure accuracy of all meters and appliances for measurements.

(h) *Examination and Tests of Appliances for Measuring.*—To provide for the examination and test of any appliance used for the measuring of any product or service of public utility, and by its agents or examiners to enter upon any premises occupied by any public utility, for the purpose of making the examinations and tests provided for in this statute. (1919, Ch. 49, Sec. 4.)

• • •

Section 5451. The commission shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined:

(a) *Proper Service.*—To furnish safe, adequate, and proper service and to keep and maintain its property and equipment in such condition as to enable it to do so.

(b) *Extensions or Abandonment Thereof.*—To establish, construct, maintain, and operate any reasonable extension of its existing facilities where in the judgment of said commission such extension is reasonable and practicable, and will furnish sufficient business to justify the construction, operation, and maintenance of the same, and when the financial condition of the public utility affected reasonably warrants the original expenditure required in making such extension, or to abandon any service when in the judgment of the commission the public welfare no longer requires the same.

(c) *Depreciation Account for Protection of Stockholders, Bondholders, etc.*—To carry for the protection of stockholders, bondholders or holders of securities a proper and adequate depreciation account in accordance with such rules, regulations, and forms of account, as the commission may prescribe. The commission shall have power to ascertain and determine, and by order in writing, after hearing, fix proper and adequate rates of depreciation of the property of each public utility, and each public utility shall conform its depreciation accounts to the rates so ascertained, determined, and fixed, and shall set aside the moneys so provided for out of earnings and carry the same in a depreciation fund. The income from investments of moneys in such fund shall likewise be carried in such fund. This depreciation fund shall not be expended otherwise than for depreciation, improvements, new constructions, extensions, or additions to the property of such public utility, unless the commission shall by order in writing give permission to the public utility to divert the fund to purposes other than those herein named. (Modified.)

(d) *Change of Rates, Fares, Schedules, Classifications, etc.*—When any public utility shall increase any existing individual rates, joint rates, tolls, fares, charges, or schedules thereof or change or alter any existing classification, the commission shall have power, either upon written complaint, or upon its own initiative, to hear and de-

termine whether the said increase, change or alteration is just and reasonable. The burden of proof to show that the said increase, change, or alteration is just and reasonable shall be upon the public utility making the same. The commission shall have power upon such hearing and determination to order the suspension, not exceeding three months, of said increase, change, or alteration until the said commission shall have approved said increase, change, or alteration; provided, however, that if the investigation cannot be completed within three months the commission shall have power to extend the period of suspension for such further time as will reasonably enable it to complete its investigation of any such increase, change, or alteration. It shall be the duty of the commission to approve any such increase, change or alteration upon being satisfied after full hearing that the same is just and reasonable.

(e) *Uniform System of Accounting*.—To keep its books, records, and accounts so as to afford an intelligent understanding of the conduct of its business, and to that end to require every such public utility of the same class to adopt a uniform system of accounting. Such system shall conform, where applicable to any system adopted or approved by the interstate commerce commission of the United States. And to furnish annually, or at such other times as the commission may require, a detailed report of finances and operations as shown by said system of accounts. (1919, Ch. 49, Sec. 5.)

Section 5452. Public Utilities are prohibited from doing what.—No public utility shall:

(a) *Unjust Rate, Fare Schedule, etc.*—Make, impose, or exact any unreasonable, unjustly discriminatory or unduly preferential individual or joint rate, or special rate, toll, fare, charge, or schedule for any product, or service supplied or rendered by it within this state.

(b) *Unjust Classification, Schedule, etc.*—Adopt or impose any unjust or unreasonable classification in the making or as the basis of any rate, toll, charge, fare, or schedule for any product or service rendered by it within this state.



(c) *Unjust Practice and Unsafe Service.*—Adopt, maintain, or enforce any regulation, practice, or measurement which shall be unjust, unreasonable, unduly preferential or discriminatory, nor shall any public utility provide or maintain any service that is unsafe, improper, or inadequate, or withhold or refuse any service which can reasonably be demanded and furnished when ordered by said commission.

(d) *Issue of Stocks, Bonds, Debentures, Evidences of Indebtedness; Leases.*—Issue any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one year from the date thereof, until it shall have first obtained authority from the commission for such proposed issue. It shall be the duty of the commission after hearing to approve any such proposed issue maturing more than one year from the date thereof upon being satisfied that the proposed issue, sale and delivery is to be made in accordance with law and the purpose of such be approved by the commission. No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property rights and franchises of any other such public utility of like character shall be valid until approved by the Commission, even though power to take such action has been conferred on such public utilities by the State of Tennessee or by any political subdivision thereof. (1919, Ch. 49, Sec. 6.)

Section 5453. No privilege or franchise hereafter granted to any public utility by the State of Tennessee or by any political subdivision thereof shall be valid until approved by said commission, such approval to be given when, after hearing, said commission determines that such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest, and the commission shall have power, if it so approves, to impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require; provided, however, that nothing herein contained shall be construed as applying to the laying of sidings, sidetracks, or switchouts, by any



public utility, and it shall not be necessary for any such public utility to obtain a certificate of convenience from the commission for such purpose. (1919, Ch. 49, Sec. 7.)

Section 5463. Annually every such public utility doing business in this state shall file with the commission a statement under oath, in such form and substance as may be prescribed by said commission, setting forth accurately the amount of its gross receipts from all sources for the preceding calendar year, and any such public utility failing to file such statement as required, or failing to give such other information as may be reasonably required of such public utility, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not exceeding fifty dollars for each day of such failure to comply therewith. (1919, Ch. 49, Sec. 8.)

Section 5502.\* Public Utility Not to Operate a Service Already Being Furnished by Another Public Utility, Nor Commence the Construction of a Plant or System Without a Certificate.—No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the railroad and public utilities commission, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law without having first obtained, in like manner, a similar certificate; provided, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall there-

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\* Cited by the Supreme Court of Tennessee in *State v. Nashville Railway & Light Co.*, 151 Tenn. 77 (1925) as establishing a state policy in favor of regulation as against competition.

tofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it. (1923, Ch. 87, Sec. 1.)

Section 5503. *Upon Complaint of Interference, Commission May Grant or Refuse Certificate: Forfeiture of Certificate.*—If any public utility, in establishing, constructing, reconstructing, or extending its route, line, plant or system, shall interfere or be about to interfere with the existing route, line, plant, or system of any other public utility, the said commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions in harmony with this statute as are just and reasonable. Such commission shall have power, after hearing involving the financial ability and good faith of the applicant, the necessity for additional service in the municipality or territory, and such other matters as it deems relevant, to issue a certificate of public necessity and convenience, or to refuse to issue the same or to issue it for the establishment or construction of a portion only of the contemplated plant, route, line, or system or extension thereof, or for the partial exercise only of such right or privilege, and may attach to the exercise of the rights granted by said certificate such terms and conditions as to time or otherwise as in its judgment the public convenience, necessity, and protection may require, and may forfeit such certificate after issuance, for noncompliance with its terms, or provide therein for an *ipso facto* forfeiture of the same for failure to exercise the rights granted within the time fixed by the commission; provided, that nothing in this law shall be construed as requiring such certificate for a municipally owned plant, project, or development. (1923, Ch. 87, Sec. 1.)

Section 5504.\* *Certificate Not to be Granted Unless the Existing Plant or System is Inadequate; Notice of Hearing.*—The said commission shall not grant a certificate for a proposed route, plant, line, or system, or extension thereof, which will be in competition with any other route, plant, line or system, unless it shall first determine that the facilities of the existing route, plant, line, or system, are inadequate to meet the reasonable needs of the public, or the public utility operating the same refuses or neglects or is unable to or has refused or neglected, after reasonable opportunity after notice, to make such additions and extensions as may reasonably be required under the provisions of this statute. In all proceedings under this section, the commission shall give at least ten days' notice to the authorities of, and the public utilities operating in, the municipality or territory affected. (1923, Ch. 87, Sec. 2.)

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\* See footnote p. 44, *supra*.

**APPENDIX E.****STATE STATUTES PURPORTING TO EXEMPT TVA FROM STATE REGULATION AS A PUBLIC UTILITY OR PURPORTING TO AUTHORIZE MUNICIPALITIES AND CO-OPERATIVE ASSOCIATIONS TO ENTER INTO CONTRACTS WITH TVA FIXING RETAIL RATES.****Alabama Acts, Regular Session 1935, No. 1.**

An Act To further limit and define the authority, powers, and jurisdiction of Alabama Public Service Commission so as to exempt therefrom certain Federal agencies, instrumentalities, and corporations; to define such Federal agencies, instrumentalities, and corporations as nonutilities and to authorize other utilities to sell, lease, or otherwise dispose of their property to such nonutilities.

*Be it enacted by the Legislature of Alabama:*

**SECTION I.** All Federal Agencies, instrumentalities or corporations, owned by the United States and all corporations or joint stock companies in which the United States or any of its departments, establishments or agencies own more than fifty per cent (50%), of the voting shares of stocks, are nonutilities within the meaning of this Act.

**SECTION II.** The Alabama Public Service Commission or like body shall not have any jurisdiction, authority, power, or control in any respect whatsoever, over any of the nonutilities as defined in this Act.

**SECTION III.** Any utility, as defined by Section 9742 of the Code of Alabama of 1923, may sell, lease, or otherwise dispose of any or all of its property, including without limitations, any franchise, right, contract, business, goodwill, capital stock, and all other assets to any nonutility as defined in this Act, without the approval or consent of the Alabama Public Service Commission, or like body or other agencies of the State of Alabama.

**SECTION IV.** If any section, clause, or other provision of this Act, or the application thereof, shall, for any reason be invalid, the same shall not affect the validity of any other section, sentence, or clause of this Act.

SECTION V. All the provisions of this Act shall become effective immediately upon the approval of the Governor.

SECTION VI. All laws or parts of laws in conflict with any provisions of this Act are hereby expressly repealed.

Approved January 24, 1935. (General Acts 1935, p. 1.)

**Alabama Acts, Regular Session 1935, No. 155.**

An Act to authorize Municipal Corporations, Counties, Towns, Cities, Public Power Districts, or Improvement Authorities owning and/or operating or authorized to acquire and/or operate, electric generation, transmission, and/or distribution systems to enter contracts with certain governmental agencies for the acquisition of such systems and/or for the purchase and sale of electric energy, providing for the covenants, terms, and conditions which may be stipulated or agreed to in any such contract, and validating any such contracts heretofore entered and any such covenants, terms, and conditions heretofore stipulated or agreed to.

*Be it enacted by the Legislature of Alabama:*

SECTION I. Any Municipal Corporation, County, City, Town, Power District, or Improvement Authority within the State, hereinafter called "Municipality," owning and/or operating or heretofore or hereafter authorized to acquire and/or operate any electric generation, transmission, and/or distribution system is hereby authorized to contract with any federal agency, or authority, or with any corporation owned by the United States for the acquisition of any such system or part thereof and/or the purchase or sale of electric energy, and in any such contract to stipulate and agree to such covenants, terms, and conditions as the governing body or board of the municipality may deem appropriate, including but without limitation, covenants, terms, and conditions in respect to the resale rates, financial and accounting methods, services, operation and maintenance practices and the manner of disposing of the revenues of any such system, and to comply therewith, and any such contract heretofore entered, and any such covenants,

terms, or conditions heretofore stipulated or agreed to are hereby expressly validated.

SECTION II. Nothing herein contained shall be construed as a restriction or limitation upon any authority, power, or right which any municipality may have in the absence hereof; this Act shall be construed as cumulative and shall be in addition and supplemental to any power, authority, or right conferred by any other law.

SECTION III. This Act is remedial in nature, and any power, authority, or right hereby conferred shall be liberally construed; and to this end every municipality shall have the power, authority, and right, in addition to those expressly conferred hereby, to do all things necessary or convenient in carrying out the purposes hereof.

SECTION IV. If any section, sentence, clause, or provision of this Act or any application thereof shall be held invalid, the validity of any other section, sentence, clause, or provision hereof or of any other application shall not be affected.

SECTION V. This Act shall become effective immediately upon its passage and approval.

Approved June 26, 1935. (General Acts 1935, p. 201.)

**Alabama Acts, Regular Session 1935, No. 45.**

An Act, providing For The Formation Of Non-Profit Membership Corporations To Be Known As Electric Membership Corporations For The Purpose Of Promoting And Encouraging The Fullest Possible Use Of Electric Energy In The State By Making Electric Energy Available To The Inhabitants Of The State At The Lowest Cost Consistent With Sound Economy And Prudent Management Of The Business Of Such Corporation; Providing For The Rights, Powers And Duties Of Such Corporations; Authorizing And Regulating The Issuance Of Revenue Obligations By Such Corporations; And Providing For the Payment Of Such Obligations And The Rights Of The Holders Thereof.

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SECTION 11. A corporation created under the provisions of this Act shall have power to do any and all acts or things necessary or convenient for carrying out the purpose for which it was formed, including, but not limited to: . . . (h) To make any and all contracts necessary and/or convenient for the full exercise of the powers in this Act granted, including, without limiting the generality of the foregoing, contracts with any person, federal agency, or municipality for the purchase or sale of energy; for the management and conduct of the business of the corporation, including the regulation of the rates, fees or charges for service rendered by the corporation.

. . . . .

Approved February 7, 1935. (General Acts 1935, pp. 100, 103.)

#### **Alabama Acts, Regular Session 1935, No. 47.**

An Act to authorize the creation of the Rural Electrification Authority of Alabama for the purpose of promoting and encouraging the fullest possible use of electric energy in the State by making electric energy available to certain inhabitants of the State at the lowest cost consistent with sound economy and prudent management; authorizing the Authority to sell and distribute electric energy and to construct or otherwise acquire a system or systems for the generation, transmission and distribution of electric energy to carry out the purposes of this Act; providing for the rights, powers and duties of the Authority; authorizing and regulating the issuance of bonds by the Authority; and providing for the payment of such bonds and the rights of the holders thereof.

. . . . .

SECTION 12: *Grant of Specific Powers.* Subject only to the constitution of the State of Alabama, the authority shall have power: . . . (12) To make any and all contracts necessary or convenient for the full exercise of the powers herein granted, including, but not limited to: (a) Contracts with any person, federal agency, or municipality for the purchase or sale of energy at wholesale. (b) Contracts

with any person, federal agency or municipality for the management and conduct of the business of the authority or any part thereof. (c) Contracts with any person, federal agency, municipality or bondholders, notwithstanding such contract may operate as limits on the right of the authority to exercise any of the powers herein granted.

• • • • •

Approved February 7, 1935. (General Acts 1935, pp. 110, 112-3.)

**Georgia Laws, 1937, No. 503, p. 644.**

An Act providing for the formation of cooperative non-profit membership corporations to be known as Electric Membership Corporations for the purpose of engaging in rural electrification by furnishing electrical energy, wiring assistance and facilities, electrical and plumbing equipment and services, to its members; Providing for the rights, powers and duties of such corporations, including their classification with regard to the jurisdiction of the Public Service Commission; authorizing and regulating the issuance of obligations by such corporations; Providing for the payments of such obligations and the rights of the holders thereof, the classifications of such obligations and the membership certificates of such corporations with respect to regulation; authorizing existing corporations organized for the same general purpose to re-incorporate hereunder, and validating certain acts, covenants, contracts, and obligations of such corporations; and for other purposes.

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**SECTION 4. *Powers of Corporation.*** Be it further enacted, That each corporation shall have power:

• • •

(13) To make any and all contracts necessary or convenient for the exercise of the powers granted in this Act; including, but not limited to, contracts with any person, federal agency, or municipality for the purchase or sale of energy, and in connection with any such contract to stipulate and agree to such covenants, terms, and conditions as

the board may deem appropriate, including covenants, terms, and conditions with respect to the resale rates, financial and accounting methods, services, operation and maintenance practices, and the manner of disposing of the revenues of the system operated and maintained by the corporation.

. . . . .

**SECTION 19. *Classification of Corporation With Respect to Jurisdiction of the Public Service Commission.*** Be it further enacted that, corporations organized under this act shall not be deemed to be subject to the jurisdiction and control of the Public Service Commission of this State.

. . . . .

Approved March 30, 1937.

**Mississippi Laws, 1936, Chapter 183, p. 335.**

An Act creating the rural electrification authority of Mississippi for the purpose of promoting and encouraging the fullest possible use of electric energy in the state by making electric energy available to certain inhabitants of the state at the lowest cost consistent with sound economy and prudent management; authorizing the authority to sell and distribute electric energy and to construct or otherwise acquire a system or systems for the generation, transmission and distribution of electric energy to carry out the purposes of this Act; providing for the rights, powers and duties of the authority; authorizing and regulating the issuance of bonds by the authority; and providing for the payment of such bonds and the rights of the holders thereof.

. . . . .

***Definitions.***

**SEC. 2.**

(10) "Federal agency" shall mean and include the United States of America, the President of the United States of America, Tennessee Valley Authority, the Federal Emergency Administrator of Public Works, the Administrator of the Rural Electrification Administration, and any and all other authorities, agencies, and instrumen-

talities of the United States of America, heretofore or hereafter created.

. . . . .

*Grant of Specific Powers.*

SEC. 12. The authority shall have power:

. . .

(13) To make any and all contracts necessary or convenient for the full exercise of the powers herein granted, including, but not limited to, (a) contracts with any person, federal agency, or municipality for the purchase or sale of energy, (b) contracts with any person, federal agency, or municipality for the management and conduct of the business of the authority or any part thereof and (c) contracts with any person, federal agency, or municipality for the acquisition of all or part of any system or systems. And in connection with any such contract to stipulate and agree to such covenants, terms and conditions as the board may deem appropriate, including, but without limitations, covenants, terms and conditions with respect to the resale rates, financial and accounting methods, services, operation and maintenance practices, and the manner of disposing of the revenues of the system or systems conducted and operated by the authority.

. . . . .

Approved March 26, 1936.

**Mississippi Laws, 1936, Chapter 184, p. 342.**

An Act providing for the formation of non-profit membership corporations to be known as electric power associations for the purpose of promoting and encouraging the fullest possible use of electric energy by making electric energy available at the lowest cost consistent with sound economy and prudent management of the business of such corporations; providing for the rights, powers and duties of such corporations; authorizing and regulating the issuance of obligations by such corporations; providing for the payments of such obligations and the rights of the holders thereof; authorizing existing corporations organized for the same general

purposes to re-incorporate hereunder and validating certain acts, contracts and covenants of such corporations and to repeal Chapter 28 of the general laws of the Extraordinary Session of 1935, granting certain tax exemptions.

. . . . .

*Definitions.*

SEC. 3.

(8) "Federal Agency" shall mean and include the United States of America, the President of the United States of America, Tennessee Valley Authority, the Federal Emergency Administrator of Public Works, the Administrator of the Rural Electrification Administration, and any and all other authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter created.

. . . . .

*Specific grants of powers.*

SEC. 12. A corporation created under the provisions of this act shall have power to do any and all acts or things necessary or convenient for carrying out the purposes for which it was formed, including, but not limited to:

. . .

(8) To make any and all contracts necessary or convenient for the full exercise of the powers in this act granted, including, but not limited to, contracts with any person, federal agency or municipality for the purchase or sale of energy and/or the acquisition of all or any part of any system, and in connection with any such contract to stipulate and agree to such covenants, terms and conditions as the board may deem appropriate, including covenants, terms and conditions with respect to the resale rates, financial and accounting methods, services, operation and maintenance practices and the manner of disposing of the revenues of the system operated and maintained by the corporation.

. . . . .

Approved March 26, 1936. (Reenacted, Mississippi Laws, 1938, Chapter 251.)

**Mississippi Laws, 1936, Chapter 185, p. 354.**

An Act to authorize counties, incorporated cities and towns in the State of Mississippi to construct, purchase or otherwise acquire, and to operate and maintain electric generating or distribution systems, within or without the county or corporate limits, to construct, purchase or otherwise acquire, to operate, maintain or use, individually or jointly, an electric generating system or systems or a transmission line or lines, within or without the corporate or county limits, to make improvements, extensions, betterments or additions to such electric systems, and such transmission line or lines, to furnish electric power and energy to any consumer or consumers, to finance such acquisition, improvement, extension, betterment, or addition by the issuance of bonds and the acceptance of federal grants, or otherwise, without respect to present indebtedness, to provide for the supervision, management and control of such electric systems and such lines, to provide by contract, or otherwise, rules and policies to govern resale rates, disposition of revenue, and other operating and management practices of such systems, in order to promote the increased domestic use of electricity in rural and urban areas by enabling such counties, incorporated cities and towns to utilize the surplus power generated by the Tennessee valley authority, or the power generated by any other works or dams.

• • • • •

*Definitions.*

SEC. 2 (h) The term "federal agency" shall include the United States of America, the president of the United States of America, or the federal emergency administrator of public works, reconstruction finance corporation, Tennessee valley authority, the administrator of the rural electrification administration or any other similar agency, instrumentality or corporation of the United States of America, which has heretofore been or may hereafter be created by or pursuant to any act or acts or joint resolution of the congress of the United States of America.

• • • • •



*Powers of Municipalities.*

SEC. 3. Every municipality shall have power and is hereby authorized:

• • •

(j) To make any and all contracts necessary or convenient for the full exercise of the powers herein granted with any natural person, firm, association, corporation, business trust, partnership, body politic, federal agency, or municipality, including, but not limited to (a) contracts for the purchase or sale of electric energy or power, and (b) contracts for the acquisition or improvement of all or any part of an electric plant or plants. And in connection with any such contract the municipality may stipulate and agree to such covenants, terms and conditions as the governing body may deem appropriate, including, but without limitation, covenants, terms and conditions with respect to the resale rates, financial and accounting methods, services, operation and maintenance practices, and the manner of disposing of the revenues of the system or systems conducted and operated by the municipality.

• • • • •

Approved March 26, 1936.

**Mississippi Laws, 1936, Chapter 187, p. 370.**

An Act providing for the creation of power districts; prescribing powers and duties of such districts; and authorizing such districts to conduct and operate utilities for the production, transmission or distribution of electric energy, and to issue bonds and providing for the payment of such bonds.

• • • • •

SEC. 14. The board of directors of any district shall have power and authority:

• • •

(6) To make any and all contracts necessary or convenient for the full exercise of the powers in this act granted, including, but not limited to, contracts with any municipality, the United States of America, the President of the United States of America, Tennessee valley author-

ity, the federal emergency administrator of public works and any and all other authorities, agencies, and instrumentalities of the United States of America, (a) for the purchase or sale of electric energy, and (b) for the acquisition of all or any part of any utility or utilities. In connection with any such contract, the board may stipulate and agree to such covenants, terms and conditions as the board may deem appropriate including, but without limitation, covenants, terms and conditions with respect to the resale rates, financial and accounting methods, services, operation and maintenance practices, and the manner of disposing of the revenues of the utility operated and maintained by the district.

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Approved March 26, 1936.

**Mississippi Laws, 1936, Chapter 271, p. 531.**

An Act to authorize municipal corporations, counties, towns, cities, public power districts or immediate authorities owning and/or operating or authorized to acquire and/or operate electric generation, transmission and/or distribution systems, to enter into contracts with certain governmental agencies for the acquisition of such systems and/or for the purchase and sale of electric energy, providing for the covenants, terms and conditions which may be stipulated or agreed to in any such contract and validating any such contracts heretofore entered into and any such covenants, terms and conditions heretofore stipulated or agreed to.

SECTION 1. Be it enacted by the Legislature of the State of Mississippi, That any municipal corporation, county, city, town, or village, power district or improvement authority, hereinafter called "municipality," owning and/or operating or hereafter authorized to acquire and/or operate any electric generation, transmission and/or distribution system, is hereby authorized to contract with the United States of America, any agency thereof, or with any corporation owned by the United States for the acquisition of any such system or part thereof and/or the purchase or

sale of electric energy, and in any such contract to stipulate and agree to such covenants, terms, and conditions as the governing body or board of the municipality may deem appropriate, including but without limitation, covenants, terms and conditions with respect to the resale rates, financial and accounting methods, service, operation and maintenance practices, and the manner of disposing of the revenues, of any such system, and to comply therewith, and any such contract heretofore entered into and any such covenants, terms or conditions heretofore stipulated or agreed to are hereby expressly validated.

. . . . .

Approved March 26, 1936.

**Kentucky Acts, Fourth Extraordinary Session, 1936-1937,  
Chapter 6, p. 25.**

An Act relating to non-profit cooperative corporations and providing, but not by way of limitation, for the formation, operation, consolidation, and dissolution of non-profit cooperative corporations to be known as "Rural Electric Cooperative Corporations" for the purpose of manufacturing, purchasing, selling, distributing, and encouraging the fullest use of electric energy in the Commonwealth of Kentucky and for the purpose of making electric energy, services, and appliances and property operated by electricity available to the inhabitants of rural areas in the Commonwealth of Kentucky at the lowest cost consistent with sound business methods and prudent management; and providing for the rights, powers and duties of such corporations; and providing for the government of such corporations; and providing for the issuance of stock and membership in and by such corporations; and providing for the issuance of obligations by such corporations; and providing for the number of persons that may organize such corporations and the form of the articles of incorporation and the corporate charter and the respective fees therefor; and providing that said corporations may use a corporate seal, sue and be sued, contract and be contracted with and purchase and hold

property, real and personal, as may be proper and necessary for carrying on its legitimate business, and mortgage, sell or lease same; and providing that said corporations may receive property, including cash, and may charge fees, rates, tolls, or rentals for energy, services or appliances and property; and providing for the issuance of stocks or bonds or memberships and the purchase of corporate stock by said corporations; and providing for the transfer of stock and the payment of patronage dividends; and providing that stockholders or members shall not be liable for the debts of the corporations; and providing for penalties for refusal to supply electric energy to said corporations; and exempting said corporations from all state, county, municipal or local taxation other than an annual tax of \$10.00 on each corporation formed hereunder; and providing that such corporations shall be subject to the general jurisdiction of the Public Service Commission of Kentucky; and exempting said corporations and the securities issued by them from the Act of March 23, 1926, known as the "Blue Sky Law," together with all amendments thereto; and conferring upon said corporations the power of eminent domain; and providing that if any provision of this Act is held invalid, it shall not affect the other provisions hereof; and repealing any and all acts or parts of acts and any and all laws or parts of laws in conflict herewith, and declaring an emergency to exist.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

\* \* \* \* \*

§2.—(f) "Federal Agency" shall mean and include, but not by way of limitation, the United States of America, the President of the United States of America, the Federal Emergency Administrator of Public Works, the Rural Electrification Administration, the Tennessee Valley Authority, the Farm Credit Administration, the Central Bank for Cooperatives, any district bank for cooperatives formed under that Act of Congress known as the Farm Credit Act of 1933 (and any amendment thereto) including any suc-

cessor to any existing bank for cooperatives, and any and all other authorities, agencies and instrumentalities of the United States of America, heretofore or hereafter created, by whatsoever title designated.

\* \* \* \* \*

§7. *Powers.*—

9. To make any and all contracts necessary or convenient for the full exercise of the powers in this act granted, including, without limiting the generality of the foregoing, contracts with any person, including, but not by way of limitation, any federal agency or instrumentality, the Tennessee Valley Authority, any corporation formed under this act, any cooperative association as defined in the Farm Credit Act of 1935, any municipality and/or the Commonwealth of Kentucky, including, but not by way of limitation, contracts for the purchase and sale of property of all kinds and character whatsoever, for the purchase and sale of energy and/or for the purchase and/or use of electrical devices, equipment, appliances, fixtures and supplies of all kinds and/or all kinds of tools, equipment and machinery operated by electricity or electric energy and deemed desirable by the corporation for its use or the use of its members; any accounting services, forms and supplies, bargaining services, business counsel and advice, engineering services, supervisory services, investment counsel, general purchasing services of all kinds, and any other service or services which may be requested, deemed advisable or desirable in the conduct of its business by any corporation formed under and for the purposes provided by subsection (a) of Section 3 of this act, for the management and conducting of the business of the corporation; for the fixing of rates, fees, or charges for service rendered or to be rendered by the corporation, subject, however, to the limitations provided in this act as to the fixing of rates; for any other corporate purpose.

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Approved January 18, 1937.

**Public Laws of North Carolina, 1935, Chapter 291, p. 312.**

An Act providing for the formation of non-profit membership corporations to be known as electric membership corporations for the purpose of promoting and encouraging the fullest possible use of electric energy in the state by making electric energy available to the inhabitants of the state at the lowest cost consistent with sound economy and prudent management of the business of such corporations; providing for the rights, powers and duties of such corporations; authorizing and regulating the issuance of bonds by such corporations; and providing for the payment of such bonds.

The General Assembly of North Carolina do enact:

\* \* \* \* \*

SEC. 2. (e) "Federal agency" shall mean and include the United States of America, the president of the United States of America, the federal emergency administrator of public works and any and all other authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter created.

\* \* \* \* \*

SEC. 13. *Specific grant of powers.* Subject only to the Constitution of the State, a corporation created under the provisions of this Act shall have power to do any and all acts or things necessary or convenient for carrying out the purpose for which it was formed, including, but not limited to:

\* \* \*

(h) To make any and all contracts necessary or convenient for the full exercise of the powers in this Act granted, including, but not limited to, contracts with any person or federal agency, for the purchase or sale of energy; for the management and conduct of the business of the corporation, including the regulation of the rates, fees or charges for service rendered by the corporation.

\* \* \* \* \*

Ratified May 4, 1935.



**Public Acts of Tennessee, 1935, Chapter 37, p. 78.**

An Act to authorize municipal corporations, counties, towns and cities owning and/or operating or authorized to acquire and/or operate, electric generation, transmission and/or distribution systems, in contracts with certain governmental agencies for the acquisition of such systems or for the purchase of electric power and energy to stipulate and agree to certain covenants, terms and conditions; and to validate any such covenants, terms and conditions heretofore stipulated or agreed to.

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee*, That any municipal corporation, county, city or town, hereinafter called "municipality," owning and/or operating or heretofore or hereafter authorized to acquire and/or operate any electric generation, transmission and/or distribution system, is hereby authorized, in any contract or arrangement with the Tennessee Valley Authority or any similar governmental agency for the acquisition of any such system or part thereof and/or the purchase of electric power and energy, to stipulate and agree to such covenants, terms, and conditions as the governing body thereof may deem appropriate, including but without limitation, covenants, terms and conditions in respect to the resale rates, financial and accounting methods, services, operation and maintenance practices and the manner of disposing of the revenues, of any such system, and to comply therewith, and any such covenants, terms or conditions heretofore stipulated or agreed to are hereby expressly validated.

SEC. 2. *Be it further enacted*, That nothing herein contained shall be construed as a restriction or limitation upon any authority, power or right which any municipality may have in the absence hereof; this Act shall be construed as cumulative and shall be in addition and supplemental to any power, authority or right conferred by any other law.

SEC. 3. *Be it further enacted*, That this Act is remedial in nature and any power, authority or right hereby conferred shall be liberally construed, and to this end every municipality shall have the power, authority and right, in

addition to those expressly conferred hereby, to do all things necessary or convenient in carrying out the purposes hereof.

SEC. 4. *Be it further enacted*, That if any section, sentence, clause or provision of this Act or any application thereof shall be held invalid, the validity of any other section, sentence, clause or provision hereof or of any other application shall not be affected.

SEC. 5. *Be it further enacted*, That this Act shall take effect from and after its passage, public welfare requiring it.

Approved February 14, 1935.

**Public Acts of Tennessee, 1937, Chapter 231, p. 882.**

An Act providing for the formation of general welfare non-profit membership corporations to be known as electric membership corporations for the purpose of promoting and encouraging the fullest possible use of electric energy by making electric energy available at the lowest cost consistent with sound economy and prudent management of the business of such corporations; providing for the rights, powers, and duties of such corporations, including their definition as a "non-utility" within the meaning of the laws of this state; authorizing and regulating issuance of obligations by such corporations; providing for the payments of such obligations and the rights of the holders thereof; authorizing existing corporations organized for the same general purpose to re-incorporate hereunder, and validating certain acts, covenants, contracts, and obligations of such corporations; and to repeal Chapter 32 of the Public Acts of the Extraordinary Session of 1935, and grant to and impose upon the corporations formed thereunder all the benefits, privileges, duties and obligations granted to or imposed upon any corporation organized under this Act, and validating certain acts, covenants, contracts, obligations, mortgages, deeds of trust, property rights, franchises, consents, and easements of such corporations.

\* \* \* \* \*

SEC. 2. Formation authorized. *Be it further enacted*, That three or more natural persons may, by executing, filing, and recording a certificate as hereinafter provided, form a corporation not organized for pecuniary profit for the purpose of promoting and encouraging the fullest possible use of electric energy by making electric energy available at the lowest cost consistent with sound economy and prudent management of the business of such corporations. Any corporation created hereunder shall be held to be a general welfare corporation, not organized or doing business for profit and a non-utility within the meaning of the laws of this State. Provided that nothing herein contained shall be construed to exempt such corporation from the general property taxes, and assessment schedules for such property shall be filed with the appropriate county officials of the county in which such property is located, and the payment of such taxes shall be in lieu of all other taxes unless the legislature specifically provides that such tax or taxes shall be applicable to Electric Membership Corporations.

SEC. 3. *Definitions.*

(8) "Federal agency" shall mean and include the United States of America, the president of the United States of America, Tennessee Valley Authority, the Rural Electrification Administration, the Federal Emergency Administrator of Public Works, and any and all other authorities, agencies and instrumentalities of the United States of America, heretofore or hereafter created.

• • • • •

SEC. 12. *Specific grants of powers.* *Be it further enacted*, That each corporation shall have power to do any and all acts or things necessary or convenient for carrying out the purpose for which it was formed, including, but not limited to, though subject always to limitations contained in other sections of this Act:

• • •

(12) To make any and all contracts necessary or convenient for the full exercise of the powers in this Act granted, including, but not limited to, contracts with any person, federal agency or municipality, for the purchase

or sale of energy and/or the acquisition of all or any part of any system, and in connection with any such contract to stipulate and agree to such covenants, terms, and conditions as the board may deem appropriate, including covenants, terms, and conditions with respect to the resale rates, financial and accounting methods, services, operation and maintenance practices, and the manner of disposing of the revenues of the system operated and maintained by the corporation.

. . . . .

Approved May 21, 1937.

**Public Acts of Tennessee, 1935, Chapter 42, p. 98.**

An Act to define and limit the authority, powers and jurisdiction of the Railroad and Public Utilities Commission so as to exempt therefrom certain Federal and State Corporations, Agencies, Instrumentalities, and other public bodies and certain non-profit organizations herein defined as non-utilities; to authorize utilities to sell, lease or otherwise dispose of their property to non-utilities; and as a part hereof to amend Sections 5380 to 5508, inclusive, of the official Code of Tennessee, passed at the regular session of the General Assembly of the State of Tennessee in 1931, known as the Code of Tennessee of 1932, said section of the code defining the term "Public Utility."

*SEC. 1. Be it enacted by the General Assembly of the State of Tennessee, That Section 5448 of the Code of Tennessee, passed by the regular session of the Legislature of Tennessee of 1931, known as the Code of Tennessee of 1932, which section defines the term "public utility" be, and the same is hereby amended by making said Section 5448 read, as follows:*

**SECTION 5448:**

Public utilities are defined—The term "public utility" is defined to include every individual, copartnership, association, corporation, or joint stock company, their lessees, trustees, or receivers, appointed by any court whatsoever, that own, operate, manage or control, within the State of Tennessee, any street railway, interurban electric railway,

traction company, all other common carriers, express, gas, electric light, heat, power, water, telephone, telegraph, or any other like system, plant or equipment, affected by and dedicated to the public use, under privileges, franchises, licenses, or agreements, granted by the state or by any political subdivision thereof; provided, however, that the term "public utility" as herein defined shall not be construed to include the following (hereinafter called non-utilities): (a) any corporation owned by or any agency or instrumentality of the United States; (b) any county, municipal corporation or other subdivision of the State of Tennessee; (c) any corporation owned by or any agency or instrumentality of the State of Tennessee; (d) any corporation or joint stock company more than fifty per cent of the voting stock or shares of which is owned by the United States, the State of Tennessee or by any non-utility referred to in (a), (b) and (c) hereof; (e) any cooperative organization, association or corporation not organized or doing business for profit; (f) any of the foregoing non-utilities acting jointly or in combination or through a joint agency or instrumentality.

SEC. 2. *Be it further enacted*, That any public utility as defined in Section 1 of this Act, may, without the approval or consent of the State of Tennessee, or of the Railroad and Public Utilities Commission, or any other agency of the State of Tennessee, sell, lease, or otherwise dispose of any of its property, including but without limitation, franchises, rights, facilities, and other assets, and its capital stock, to any of the foregoing non-utilities.

SEC. 3. *Be it further enacted*, That if any section, sentence, clause or provision of this Act or any application thereof shall be held invalid, the same shall not affect the validity of any other section, sentence, clause or provision of this Act, or of any other application thereof.

SEC. 4. *Be it further enacted*, That this Act shall continue in force until expressly repealed by the specific provisions of a subsequent enactment.

SEC. 5. *Be it further enacted*, That this Act shall take effect from and after its passage, the public welfare requiring it.

Approved February 19, 1935.

**APPENDIX F.****EXCERPTS FROM ARGUMENT IN THE SUPREME COURT  
IN ASHWANDER v. TENNESSEE VALLEY AUTHORITY,  
297 U. S. 288.**

"Mr. Justice Van Devanter: You are saying that we have a limited case before us, not one that is so broad as is contended. Do you mean by that that we should in this case consider what the purposes of the Wilson Dam were, as declared in the legislation under which it was constructed, and then that we should proceed upon the idea that the Government owned that property, and it may take some steps to realize on that property, to make it productive, and that that is all that is involved in this case so far as any concrete case is concerned? Is that your point?

Mr. Reed: No; I would not make that contention, because the TVA Act of course speaks of other dams. The point we make is that this contract does not take electricity from any place except Wilson Dam; that that produces sufficient electricity for this contract; and that if you will look at this contract as something for which the power is to be drawn from Wilson Dam, it is well within the limits of what Congress may produce in electricity, incidentally.

Now, it may be that Congress would produce electricity in the limitless amount that has been referred to, and then other questions would arise; but here we have only the question of disposing of a limited amount of this electricity that was produced at Wilson Dam.

Mr. Justice Van Devanter: My question was, what is the concrete case that you understand is before us, and to which you would suggest that we should confine our decision. Now I understand you to indicate that there are some things under this Tennessee Valley Authority which as yet have not come into being, and there is not a present concrete case about them.

Mr. Reed: That is correct.

Mr. Justice Van Devanter: That this contract, as I understood you, relates only to Wilson Dam, and that this contract would be fully maintained and carried out by resorting to nothing except Wilson Dam. Is that true?

Mr. Reed: That is correct. The latter statement is correct; and when you say that this contract relates only to



Wilson Dam, of course it is a contract for the purchase of transmission lines.

Mr. Justice Van Devanter: I understand that, but transmission lines to be supplied from the Wilson Dam.

Mr. Reed: Solely from the Wilson Dam."

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"Mr. O'Brian: These transmission lines which are referred to repeatedly in the opinions of the lower courts and the findings are eight relatively short transmission lines. They extend from Wilson Dam and its substation at the nitrate plant to various municipalities in northern Alabama, and the farthest municipality away is 51 miles from the dam. So these are short transmission lines."